

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
GREGORIO AND MARTHA CASTILLO)

For Appellants: Gregorio Castillo, in pro. per.
For Respondent: James T. Philbin
Counsel

O P I N I O N

This appeal is made pursuant to section 18593 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Gregorio and Martha Castillo against a proposed assessment of additional personal income tax in the amount of \$165.46 for the year 1976.

Appeal of Gregorio and Martha Castillo

The sole issue for decision is whether respondent's determination, which is based on corresponding federal action, was erroneous.

On their 1976 tax return, appellants claimed a deduction of \$3,050.00 for repair of their rental property. Thereafter, appellants' return was audited by the Internal Revenue Service, which disallowed \$2,034.00 of the claimed \$3,050.00 on the ground that the amount represented a capital expenditure. Depreciation on the amount capitalized was allowed. Appellants signed the revenue agent's report and thereby indicated agreement with the change. Based upon the federal audit change, respondent issued its notice of proposed assessment. Appellants' protest was denied and this appeal followed.

Section 18451 of the Revenue and Taxation Code provides, in part, that a taxpayer shall either concede the accuracy of a federal determination or state wherein it is erroneous. It is well settled that a determination by the Franchise Tax Board based upon a federal audit is presumed to be correct, and the burden is on the taxpayer to overcome that presumption. (Todd v. McColgan, 89 Cal. App.2d 509 [201 P.2d 414] (1949); Appeal of Willard D. and Esther J. Schoellerman, Cal. St. Bd. of Equal., Sept. 17, 1973; Appeal of Joseph B. and Cora' Morris, Cal. St. Bd. of Equal., Dec. 13, 1971.) Here, appellants agreed with the federal audit change. In addition, they have failed to present evidence that the Internal Revenue Service has revised its assessment. Furthermore, appellants have offered no evidence to indicate that the federal action was erroneous. Therefore, we must conclude that appellants have failed to carry their burden of proof, and respondent's determination of additional tax for the year 1976 must be upheld.

O R D E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 18595 of the Revenue and Taxation **Code**, that the action of the Franchise Tax Board on the protest of Gregorio and Martha Castillo against a proposed assessment of additional personal income tax in the amount of \$165.46 for the year 1976, be and the same is hereby sustained.

Daniel H. Lee, Chairman
 Ernest A. Romberg, Member
 William L. Bess, Member
 George E. Kelly, Member
 , Member